

PUBLIC

AI Index: AMR 51/067/2005

UA 110/05

Death penalty / Legal concern

04 May 2005

USA (Oklahoma)

George James Miller (m), black, aged 39

George Miller is scheduled to be executed in Oklahoma on 12 May 2005. He was sentenced to death for the murder of Kent Dodd in 1994.

On 17 September 1994, 25-year-old Kent Dodd, white, was working as a night auditor in a Central Plaza Hotel in Oklahoma City. At about 3.15am, he registered a guest. Shortly thereafter, Dodd was attacked by someone who stabbed him repeatedly, beat him and poured acid on him. At about 6am, Kent Dodd was found by another worker who had arrived for the morning shift. Dodd was taken to hospital, where he died later that day. Before he died, he told police that his attacker had been a black man wearing grey trousers, who had robbed him. Kent Dodd knew Miller, although only under the alias Jay Elkins. However, Dodd did not identify "Jay Elkins" as his attacker during police questioning.

As the Oklahoma Court of Criminal Appeals noted in 1998, "all of the evidence against George Miller is circumstantial". The prosecution only circumstantially linked George Miller to a sum of money (around \$100) similar to the amount taken from the hotel reception. No forensic evidence identifies Miller as the attacker and there were no eyewitnesses to the crime. DNA testing of a microscopic drop of what was suspected as blood found on one of Miller's sandals could have come from the victim, but the jury was told by a prosecution expert that it also could have come from 1 in 19 Caucasians, 1 in 16 African Americans or 1 in 55 Hispanics. According to a state expert, a bloody footprint left at the crime scene could have been made by one of Miller's sandals, but there were no unique distinguishing marks in the footprint that would conclusively identify Miller's sandal as the footwear that left the print. What is more, no blood was found on the soles of either sandal. Also no blood was found in Miller's wife's car, which Miller had borrowed on the night in question.

In Oklahoma, the state is allowed to make two closing arguments in the guilt/innocence stage of the trial. It makes its first closing argument after all the evidence has been presented, and the defence then presents its closing argument. The state is then allowed to make a second closing argument, after which the jury retires to deliberate its verdict. During this second closing argument at the Miller trial, the prosecution introduced State Exhibit No. 55, a photograph of blood on the floor and the walls of the crime scene. The prosecutor told the jury that the most important evidence had almost been overlooked, and that the jurors could see that the murder victim "went into his own blood... and wrote his killer's name". The prosecutor then placed a transparent overlay with the name "Jay" written on it and apparently matched it with a blood smear on the wall in the photograph. The prosecutor also claimed that Kent Dodd did more: "He wanted to make sure that you saw it, you people... Folks, he wrote the letter J in the lower left-hand corner of that picture. J, which of course, usually stands for the word Jay."

The defence was not allowed to respond to this presentation, which was submitted not as evidence during the trial but as an assertion in the final closing argument. In 1998, the Oklahoma Court of Criminal Appeals rejected the claim that this prosecutorial tactic had been prejudicial. It ruled that "the transparency was akin to counsel writing with chalk on a blackboard. Counsel for both defense and State are granted wide latitude..." It said that State Exhibit No. 55 "was not introduced into evidence and it was not taken into deliberations by the jury". Yet, in July 2000, two of the jurors from the trial signed affidavits indicating that they would not have voted to convict George Miller if it were not for this evidence. One said: "Had the footprint and DNA evidence alone been presented, it is doubtful I would have voted for guilt". The other said: "I didn't think Mr Miller was guilty until that district attorney showed us that photo where the victim wrote the name "Jay" in his own blood". In addition, testing revealed that Kent Dodd had no blood on his fingernails.

Upholding the conviction and death sentence in January 2004, the US Court of Appeals for the Tenth Circuit acknowledged that “the transparencies may have unfairly emphasized or even exaggerated the significance of the blood spatters, and may have potentially injected a new theory into the case.” However, federal courts are obliged to give substantial deference to state court rulings and the Tenth Circuit court ruled that the Oklahoma Court of Criminal Appeals had not ruled unreasonably when it found that the trial court had not been in error when it allowed the prosecutor this leeway.

None of the blood from the crime scene was identified as coming from Miller, even though Kent Dodd had evidently fought for his life. In a 1998 report, a serology expert noted that “the bloodstain in the lobby did not originate from Kent Dodd. This was not testified to in trial”. Also in 1998, a man employed as a maintenance worker at the Central Plaza Hotel in September 1994 signed an affidavit that he had seen another man, Reginald Robinson, in the early hours of 17 September 1994 and that Robinson “had blood on his clothes and was cut up. His right hand had a large wound and he had it wrapped up. [He] had money with him.” The bloodstain in the lobby was not tested to see if it was Robinson’s. It is also alleged that on the day of the murder, prior to any media reporting of it, Robinson confessed to the crime.

On 20 April 2005, the Oklahoma Pardon and Parole Board recommended by four votes to one that Governor Brad Henry should deny clemency to George Miller. In Oklahoma, the Governor cannot commute a death sentence without a recommendation to do so from the Board. However, he can order a temporary reprieve. He should do so, and ask the Board to reconsider its decision.

BACKGROUND INFORMATION

Oklahoma has the highest rate of execution per capita of all the US death penalty states. It ranks 27th of the 50 US states in terms of population and third in the number of executions carried out since the USA resumed judicial killing in 1977. It accounts for 76 of the nationwide total of 963 executions since that year. Oklahoma has violated international law and standards in its pursuit of judicial killing and its prosecutors have earned a reputation for misconduct in capital cases (see *USA: Old habits die hard: The death penalty in Oklahoma*, AMR 51/055/2001, April 2001). Amnesty International opposes the death penalty in all cases, regardless of questions of guilt or innocence. Under the United Nations Safeguards Guaranteeing Protection of the Rights of Those Facing the Death Penalty, “Capital punishment may be imposed only when the guilt of the person charged is based upon clear and convincing evidence leaving no room for an alternative explanation of the facts.”

RECOMMENDED ACTION: Please send appeals to arrive as quickly as possible, in English or your own language, in your own words:

- expressing sympathy for the family and friends of Kent Dodd, and explaining that you are not seeking to excuse the manner of his death or to downplay the suffering that it will have caused;
- opposing the execution of George Miller;
- urging the Governor to issue a reprieve from execution and to ask the Pardon and Parole Board to reconsider their decision not to recommend clemency for George Miller.

APPEALS TO:

Governor Brad Henry
State Capitol Building, 2300 N. Lincoln Blvd., Room 212, Oklahoma City, OK 73105, USA

Fax: +1 405 521-3353

Salutation: Dear Governor

COPIES TO: diplomatic representatives of the USA accredited to your country.

PLEASE SEND APPEALS IMMEDIATELY.